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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

RESPONSE OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA TO THE VENICE COMMISSION'S OPINION ON THE DRAFT CONSTITUTIONAL LAW ON THE RIGHTS OF NATIONAL MINORITIES

This document contains the response of the Working Group for the Drafting of the Constitutional Law which shall regulate the Rights of National Minorities in the Republic of Croatia to the Venice Commission's opinion (CDL (2002) 111) relating to the draft Constitutional law on the rights of national minorities in Croatia, as submitted to the Croatian Parliament on 22 July 2002.

It was submitted to the Venice Commission through the OSCE Mission in Croatia on 25 November in Croatian language, and on 29 November in English language.

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Working Group for the Drafting of the Constitutional Law which shall regulate the Rights of National Minorities in the Republic of Croatia

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES

Subject: Proposal of the Constitutional Law on the Rights of National Minorities – response to the opinions of:
European Commission for Democracy through Law (Venice Commission)
OSCE High Commissioner on National Minorities

Attachment: Proposal of the Constitutional Law on the Rights of National Minorities (as of 21 November 2002.)

European Commission for Democracy through Law (Venice Commission) has produced its opinion (No. 216/2002, of 12 September 2002) on the Constitutional Law on the Rights of National Minorities (the opinion was given based on the text of the Proposal of the Constitutional Law which had been forwarded for the first reading in the Croatian Parliament by the Government of the Republic of Croatia on 22 July 2002. In this opinion, the Venice Commission asked for the comments on (interpretation of) some of the provisions of the Constitutional Law, giving some remarks and proposals as well. The OSCE High

Commissioner on National Minorities (OSCE HCNM) also gave his Comment on the Proposal of the Constitutional Law on the Rights of National Minorities in his letter of 26 July 2002 in the perspective of its conformity with the obligations of the Republic of Croatia with respect to both, international law and domestic legislation. Since the Venice Commission and the OSCE High Commissioner have expressed mainly the same opinions on the same issues and the provisions of the Proposal of the Constitutional Law, the approach of the Working Group, which shall draft the Constitutional Law, has been presented in this unique response. Attached herein is the Draft Proposal of the Constitutional Law in which the manner of normative regulation of accepted remarks and proposals is visible.

1. a) With regard to the provisions on "the Constitutional Law and special laws", the Venice Commission raises the question as to whether the special laws referred to in Article 2, paragraphs 3, 4 and 5, Articles 5, 6 and others, are placed on an equal footing with the Constitutional Law, particularly whether it is possible to assess constitutionally and legally if these special laws are in conformity with the Constitutional Law. The OSCE HCNM believes that "the constitutional nature of the Law and the commitment of the Republic of Croatia to guarantee the rights of persons belonging to national minorities in the constitutional law should be stressed. While a constitutional law may be expected to contain only fundamental standards, many provisions of the current Draft Law suffer the basic deficiency that the content of the rights is left entirely to a special law without entrenching any guiding principle or other guarantee. This concerns *inter alia* Articles 9(2), 10, 11 and 16. From the point of view of both legal certainty and entrenchment of rights, it is recommended that the Constitutional Law should prescribe in greater detail the essential content of the guaranteed rights. Although both the Constitutional Law and the implementing laws would be regarded according to the Constitution as "organic laws" (requiring a special majority in Parliament for their adoption), the Constitutional Law should normally take precedence over implementing laws".

b) We note: The Constitution of the Republic of Croatia, in the provision of Article 15, paragraph 2, prescribes: "Equality and the protection of the rights of national minorities shall be regulated by the Constitutional Law which shall be adopted in the procedure provided for the adoption of organic laws", and in the provision of the same Article, paragraph 3, it prescribes: "Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law", and in the provision of Article 82, paragraph 1, it prescribes: "Laws (organic laws) which regulate the rights of national minorities shall be passed by the Croatian Parliament by a two-thirds majority vote of all the representatives".

The Constitutional Law which is adopted on the basis of Article 15, paragraph 2, of the Constitution is in fact an organic law which is (only) named constitutional law, but is not at the same level as a constitutional law adopted according to the procedure for the adoption of the Constitution (such as the Constitutional Law on the Constitutional Court of the Republic of Croatia, or the constitutional laws adopted for the implementation of the Constitution of the Republic of Croatia). However, due to some of its special features, it is possible to regulate with it some general principles of rights and freedoms of national minorities that have (already) been regulated or will be regulated by special laws. Such provisions are, for instance, the provisions of Articles 5, 9 and 10 of the Constitutional Law. This means that in accordance with these principles special laws should regulate certain issues that are regulated by special laws (organic laws) for the regulation of the rights of national minorities. However, if this would not be the case, the validity of the provisions contained in

special laws could not be assessed, as they might be contrary to the provisions of this Constitutional Law. On the other hand, the Constitutional Law does not derogate, for instance, in its provisions of Articles 9, 10 and 11, the rights prescribed by the organic laws adopted before (the Law on the Use of Minority Languages and Scripts in the Republic of Croatia, *Narodne novine* - the Official Gazette of the Republic of Croatia, No. 51/2000; and the Law on Education in Minority Languages and Scripts in the Republic of Croatia, Official Gazette, No. 51/2000). Moreover, the Draft Proposal of the Constitutional Law (which is particularly favoured by the OSCE HCNM), in the provision of Article 10, paragraph 1, provides for a higher standard of rights than it is prescribed by the existing Law on the Use of Minority Languages and Scripts.

Starting from the opinions of the Venice Commission and the OSCE HCNM, in the Final Draft Proposal of the Constitutional Law, we have prescribed the principles on which the provisions of the existing special laws are based, and on which the provisions of the future special laws for the regulation of the rights of national minorities shall be based. This is particularly visible in the new part of the provisions of Articles 9 and 10 of the Final Draft Proposal of the Constitutional Law.

2. a) The opinion of the OSCE HCNM is as follows: "Further, the legislator should also provide for the minimum standard guaranteed in Article 10 (2) of the Framework Convention which stipulates that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, the Parties shall endeavor to ensure the conditions which would make it possible to use the minority language in relation between those persons and the administrative authorities. It is necessary that the Draft Constitutional Law, besides the guarantee for minorities constituting substantial numbers, provide a guarantee also for national minorities who live traditionally in some areas to use their language before the administrative authorities."

b) We note that the existing Law on the Use of Minority Languages and Scripts in the Republic of Croatia (Official Gazette, No. 51/2000) widely prescribes the cases in which equal official use of languages and scripts of national minorities is exercised. These are, in addition to the cases when persons belonging to a national minority in a municipal or a city area account for the majority of the population (here, the Final Draft Proposal of the Constitutional Law lowers this requirement to one third of the population in such local self-government units), the cases when this is prescribed by international agreements or when municipalities, cities and counties prescribe it in their statutes, according to the existing Constitutional Law (*de lege ferenda* the new Constitutional Law) and the Framework Convention. Furthermore, in the legal system of the Republic of Croatia, there are many other essential laws which, in relation to the provisions of the Constitutional Law and the Law on the Official Use of Minority Languages and Scripts, provide for the national minorities to use their own languages and scripts in criminal, minor offence, administrative and civil court procedures. These are, for instance, the provisions of Article 7 (paragraphs 1 and 4), Article 119 (paragraph 5), Article 231 (paragraph 1) of the Law on Criminal Procedure (Official Gazette, Nos. 110/97, 58/99, 112/99 and 58/2002), provisions of Article 6, Article 102 (paragraph 2) of the Law on General Administrative Procedure (Official Gazette, Nos. 53/91 and 103/96). We assess the existing solutions, including the positive change in favour of minorities contained in the provision of Article 10, paragraph 1, of the Final Proposal of the Constitutional Law, and the prescription of the provision in paragraph 2 of this Article, as satisfactory with respect to the manner in which the provision of Article 10, paragraph 2, of the Framework Convention, has been elaborated. We remind that persons belonging to many

national minorities live in the Republic of Croatia. Persons belonging to only one national minority account for more than 1.5% of the total population in the Republic of Croatia, persons belonging to some other national minorities, around a thousand or a hundred Croatian citizens, live in one or more compact communities, and therefore the provision of Article 10, paragraph 1, of the Constitutional Law, extends the official use of minority language to such communities, too. Persons belonging to other national minorities, who as a rule comprise small numbers in relation to the rest of the population of the Republic of Croatia, live in almost negligible numbers in cities and settlements of many local self-government units, making it practically impossible and unnecessary to elaborate further the content of the provision of Article 10, paragraph 2, of the Framework Convention in the Constitutional Law. For example, Roma, Albanians, Germans, Slovenians and Jews live in groups of several persons in different local self-government units.

3. a) According to the opinion of the OSCE HCNM, instead of the term "members" of a national minority, it should be useful to apply the terminology established in international human rights standards, i.e. "persons belonging to national minorities".

b) The Constitution of the Republic of Croatia uses the term "members of national minorities" to refer to persons belonging to national minorities. The same is the case of the Croatian text of the Framework Convention for the Protection of National Minorities (Official Gazette – International Agreements, No. 14/97). However, we agreed to use the term proposed by the OSCE HCNM in the provision of Article 1, and to use the term used in the Constitution of the Republic of Croatia further in the text (as an abbreviated form).

4. a) As to the provision of Article 2, paragraph 5 (reading as follows: "This Constitutional Law or a special law shall provide for the exercise of certain rights and freedoms depending on the numerical representation of the members of national minorities in the Republic of Croatia or in one of its areas, on their acquired rights and on the international agreements."), the Venice Commission raises the question of what is meant by "acquired rights", since this Constitutional Law in this provision and in the provision of Article 39 ("This Constitutional Law shall neither change nor abolish the rights of national minorities acquired on the basis of international agreements in which the Republic of Croatia is a contracting party.") distinguishes the rights stemming from the international agreements in which the Republic of Croatia is a contracting party (I hereby note that such international agreements are above all the Agreement between the Republic of Croatia and the Republic of Italy on the Rights of National Minorities, and the Agreement between the Republic of Croatia and the Republic of Hungary on the Protection of Minorities in the Republic of Croatia and Croatian Minority in the Republic of Hungary, as well as the provisions of the Framework Convention for the Protection of National Minorities which could be immediately applied, such as the provisions of Articles 16, 22 and 23). I hereby note as follows:

b) The provision of Article 2, paragraph 6, of the Final Proposal of the Constitutional Law (in the Proposal of the Constitutional Law this was the provision of Article 2, paragraph 5), understands (encompasses within) the term "acquired" rights the rights which the Republic of Croatia accepted with the Letter of Intent of the Government of the Republic of Croatia to the United Nations Security Council of 13 January 1997 "for the termination of the peaceful reintegration of the area under the Transitional Administration, Republic of Croatia" (this Letter guarantees to the Serbian ethnic community, in the region under the Transitional Administration, the positions of Deputy Prefects in Osječko-baranjska and Vukovarsko-srijemska Counties; it guarantees proportional representation of Serbs,

including the highest positions in local health care services, police and the judiciary, and establishes the number of local police officers belonging to Serbian and other non-Croatian communities; the appointment of representatives of the Serbian ethnic community to the high positions in the Ministry of Development and Reconstruction, as well as in the Office for Expellees and Refugees, at the level not lower than the Assistant Minister in the ministries of the interior, justice, education and culture; the right to appropriate representation at the expert level in the working bodies of the Croatian Parliament, etc.).

We have accepted that the explanation of the provision of Article 2, paragraph 5, implies the rights from the above-mentioned document.

5. a) The Venice Commission establishes that in the definition of a "national minority", according to the provision of Article 3 of the Constitutional Law, the concept of a "national minority" is restricted to "Croatian citizens", and that it accordingly "restricts the rights to Express oneself freely on whether one is a member of a national minority, and to exercise minority rights and freedoms to "citizen(s) of the Republic of Croatia", which again means that the prohibition of discrimination and the guarantee of equal treatment refer to Croatian citizens only. Here the Venice Commission shows that "Article 2 of the Commission's proposal for a European Convention for the Protection of Minorities mentions expressly the citizenship among features that characterise a "minority group", so does the Recommendation of the Parliamentary Assembly 1202 (1993). On the other hand, the Framework Convention for the protection of national minorities remains rather ambiguous in this regard. Therefore, it could be argued that there are specific minority rights – not only those of a political character - which may be legitimately reserved for citizens only. The Commission understands that the definition of a "national minority" given in Article 3 is a definition formulated for the purpose of the present Constitutional Law only, and that is not meant to give a definition in terms of Croatian law in general. The Commission would nevertheless favour the inclusion of an explicit provision in this sense in the draft law if the restriction to "citizens" is maintained. Furthermore, the Explanation concerning Articles 2 and 3 should also clarify that the restriction to "Croatian citizens" is not intended to, and cannot, restrict the definition of a "national minority" in a general way concerning the enjoyment of the rights under the Constitution, other domestic regulations and international law, in relation to which no requirement of citizenship has been made and to which everybody is entitled on an equal basis."

The OSCE HCNM also considers the definition which restricts the notion of national minorities to Croatian citizens only, as a restriction which "is neither in accordance with the expressed language of international standards (which prescribes entitlements for "everyone" or for "persons" belonging to minorities) nor follows from the content of internationally prescribed minority rights for which citizenship is fundamentally not relevant, with exception of the right to political participatory rights to vote and stand for office which may be limited to citizens."

b) The Constitution of the Republic of Croatia in most of its provisions sets high standards for the protection of human rights and fundamental freedoms (personal, political, economic, social and cultural, not only for the citizens of the Republic of Croatia, but also for foreign citizens when they find themselves in the Republic of Croatia. They (the Constitution and other regulations of the Republic of Croatia use the terms 'foreign persons' or 'aliens') have all the fundamental human rights and freedoms established in the Constitution of the Republic of Croatia and other legal regulations of the Republic of Croatia for the aliens

residing in the Republic of Croatia. These are not only the provisions that expressly speak of foreign citizens or foreign persons or aliens, but also a range of other provisions, such as, for instance, the provisions of Articles 21-25, 28 and 29, 31 and 32, etc. In addition, we, for example, refer to particularly significant provisions of Article 7, paragraphs 2, 3 and 6, and Article 165 of the Law on Criminal Procedure, Article 102 of the Law on Civil Procedure, Article 15. Certainly among these provisions, it should be referred to the provisions of the Law on Associations (Official Gazette, No. 88/2001) which enable foreign citizens to form associations and which provide (Article 8) that foreign associations, under the conditions prescribed in this provision, can operate in the Republic of Croatia, and it should be referred to a series of special laws enabling aliens to establish companies in the Republic of Croatia or other types of legal entities. In the Final Draft Proposal of the Constitutional Law we therefore remained at the normative approach which the position of a "person belonging to a national minority" gives only to the citizens of the Republic of Croatia who declare themselves as such. Croatian citizens who have not declared themselves as belonging to a national minority in the Republic of Croatia have no rights either which this Constitutional Law and other constitutional laws give (only) to Croatian citizens who belong to national minorities. They do have such rights just the same, not on the basis of this Constitutional Law and special laws on the rights of national minorities, but on the basis of the Constitution of the Republic of Croatia and other laws. They do not have special rights, such as the right to elect their representatives into the local self-government units, the Croatian Parliament and alike. Likewise, the persons who are citizens of other states, and reside in the territory of the Republic of Croatia, cannot be regarded as persons belonging to national minorities in the Republic of Croatia. Citizens of the Republic of Italy or the Republic of Austria who live and work in the Republic of Croatia are not regarded as persons belonging to the Italian or the Austrian national minority in the Republic of Croatia, and do not have the rights which, according to this Constitutional Law and other special laws, other persons belonging to these national minorities have.

We hereby note that the definition of a national minority, prescribed in the provision of Article 3 of the Final Draft Proposal of the Constitutional Law, basically corresponds to the definition of a national minority in the Instrument of the Central European Initiative for the protection of national minorities, the document which was signed on 30 April 1996 by foreign affairs ministers of Austria, Bosnia and Herzegovina, Hungary, Italy, Macedonia, Poland and Croatia.

6. a) With regard to prescribing a part of the definition of national minorities in Article 3 "whose members have been traditionally settled in the territory of the Republic of Croatia", the Venice Commission notes that this is an important restriction which is difficult, but by all means necessary to clarify in the Explanation concerning Article 3. The OSCE HCNM also shows that "neither the Draft Law nor the Explanatory Note defines the notion of traditional minority. The determination of which group would qualify for the protection of the Draft Law would, therefore, be arbitrary. More importantly, such a prescription is incompatible with the application of international minority rights standards.".

b) We note that the suggested formulation is based on the provisions of the Framework Convention which speak of "areas inhabited by persons who traditionally or in greater numbers belong to national minorities" (Articles 10, 11 and 14), but we shall discuss this issue at a further stage of the proceedings regarding the adoption of the Constitutional Law on the Rights of National Minorities, particularly at the stage of the second reading before the Croatian Parliament.

7. a) The OSCE HCNM suggests that the provision of Article 15 of the Constitutional Law should not use the terms "parent country" and "belonging to a nation", but rather to regulate this provision according to the language of Article 17 of the Framework Convention.

b) Although in special laws by which the Republic of Croatia regulates the rights of national minorities (for example, Article 16 of the Law on Education in the Minority Languages and Scripts) we find the stipulation which speaks of a "parent country" of a national minority, we have accepted the OSCE HCNM suggestion and changed accordingly the language of the former Article 15 provision (this is now Article 14 of the Final Draft Proposal of the Constitutional Law).

8. a) The OSCE HCNM believes that in addition to the provision of the Article 17 which facilitates access to the public media, it is important to include (prescribe) "the right of persons belonging to national minorities to establish and maintain their own minority language media, as guaranteed in Article 9 of the Framework Convention".

b) We have accepted this suggestion, which is visible from the provision of Article 16, paragraph 2 of the Final Draft Proposal of the Constitutional Law.

9) a) Regarding the provision of Article 18 of the Proposal of the Constitutional Law which regulated the exercise of the right of national minorities to representation in the Croatian Parliament the Venice Commission and the OSCE HCNM point out that several issues (of concern) have been raised, i.e. problems and ambiguities in relation to the application of electoral models. Furthermore, in its opinion, the Venice Commission raises the question (the same as the one in connection with the provision of Article 19) as to "whether the needs of minority protection may justify a derogation from the principle 'one man, one vote'" and expresses its concern regarding the fact "that any special voting system for members of minorities requires that the voters concerned and the candidates must reveal that they belong to a national minority (for instance at the moment of voting or in the frame of a census). Persons belonging to certain minorities may be reluctant to do so out of fear for discriminatory treatment or other forms of harassment. Principle 2.d.cc. of the Guidelines on Elections of the Venice Commission states the following: "Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority". The OSCE HCNM, too, (in his remark on the provision of Article 18, paragraph 3, of the Proposal of the Constitutional Law, which has not been changed and which is contained in the provision of Article 17, paragraph 3, of the Final Draft Proposal of the Constitutional Law) points out that "such a system makes representation directly dependable on the declaration of the ethnicity of the voters. In other words, the number of seats given to a national minority will depend on the number of persons willing to declare their ethnicity in the voters register. In this connection, it should be noted that the voters registers are public documents in Croatia. Such a system may indeed diminish the chances of achieving additional seats in the Parliament for a Serbian national minority, apart from the seat guaranteed in Article 18 (3) of the Draft Law. In this context, paragraph 32 of the OSCE Copenhagen Document as well as Article 3 of the Framework Convention must also be recalled. Both instruments guarantee the right of every person belonging to a national minority to freely choose to be treated or not to be treated as such and no disadvantage may arise from the exercise of such choice."

b) The Constitution of the Republic of Croatia establishes, in the provision of Article 70, the Croatian Parliament as a "representative body of the people which is vested with the legislative power in the Republic of Croatia." The Constitution of the Republic of Croatia, in the provision of Article 45, paragraph 1, prescribes that "all Croatian Citizens of the Republic of Croatia who have reached the age of eighteen years shall have universal and equal suffrage. This right shall be exercised through direct elections by secret ballot", and in the provision of Article 15, paragraph 3 (as of the day of promulgating the amendments to the Croatian Constitution, Official Gazette, No. 113/2000) it prescribes that: "Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by the law".

During the drafting process of the Final Proposal of the Law on the Rights of National Minorities, when the manner in which the right of persons belonging to national minorities to representation in the Croatian Parliament was to be regulated, the Government of the Republic of Croatia found itself in the situation in which it was necessary to find solutions among several principles, some elements of which were contrary to each other, while others were questionable in terms of normative regulation of the exercise of the rights of national minorities to representation in the Croatian Parliament. These principles are:

1/ the principle of equal value of the representatives' mandate regardless of the manner in which they were elected. Based on the provision of Article 74, paragraph 1, of the Constitution of the Republic of Croatia and according to the opinion of the Constitutional Court of the Republic of Croatia (Decision and Ruling No: U-I-732/98 of 12 April 2001, Official Gazette, No. 36/2001), in the matter of assessing whether the provision of Article 17, paragraph 3, of the Constitutional Law on Human Rights and the Rights and Freedoms of Ethnic and National Communities or Minorities in the Republic of Croatia, is constitutional, (Official Gazette, No. 105/2000 – final text) "the mandate of the representatives in the Croatian Parliament is neither obligatory nor imperative, but representational or free", and "the elected representative is the holder of the collective mandate which he acquired with his election. In a representative body he represents the interest of the entire population, and not only the interests of the voters who elected him, i.e. of the constituency in which he was elected". This opinion of the Constitutional Court has not been disputable in the work of the Croatian Parliament to date. Representatives elected by persons belonging to national minorities, and in whose election participated a significantly smaller number of voters than in the election of representatives based on general voting rights, had the same rights as all the other representatives in the Croatian Parliament.

2/ the principle of "acquired rights". In the provision of Article 16 of the Law on the Elections of the Representatives to the Croatian National Parliament (Official Gazette, No. 116/99), "the Republic of Croatia guarantees the exercise of the right to the representation in the House of Representatives of the Croatian Parliament to the members of autochthonous national minorities in the Republic of Croatia. Members of the autochthonous national minorities in the Republic of Croatia are entitled to elect 5 representatives into the Croatian Parliament". The provision of Article 17 of this Law prescribes that "according to the Constitutional principle of equality of voters' rights, members of autochthonous national minorities may elect either a representative from the ranks of national minorities who is elected in special constituencies, or participate in the election on the basis of the lists in constituencies" (this provision was based on the then valid constitutional provisions, on which the Constitutional Court gave its opinion in its Decision No. U-I-1203/99 of 3 February 2002, Official Gazette, No. 20/2000 reading as follows: "the Constitution with its expressed

language prescribes the obligation to exercise general and equal electoral right for all Croatian citizens, and does not recognize the right to national minorities to have greater number of votes." The provision of Article 15, paragraph 3, prescribed only later on, opened, as we have shown, the possibility to give, in accordance with law, the special right to elect their representatives /dual vote right/ to the persons belonging to national minorities). The Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (Official Gazette, No. 105/2000 – final text, also establishes the right of national minorities to representation in the Croatian Parliament (a national minority accounting for more than 8% in the population of the Republic of Croatia has the right to the representation in proportion to its share in the total population, and national minorities whose share in the population of the Republic of Croatia is less than 8% have the right to elect at least five and maximum seven representatives).

3/ dual vote principle. The right of persons belonging to national minorities to elect a number of representatives from the ranks of national minorities, in addition to the general voting right on the basis of which persons belonging to national minorities, as any other Croatian citizen, may participate in the elections of all parliamentary representatives, is indisputably contradictory to the principle of voters' equality. If the application of the dual vote principle would enable persons belonging to national minorities to elect a greater number of representatives, such representation in the Croatian Parliament would give them greater influence on the adoption of regulations and other relevant acts than this is the case of other voters. More specifically, the vote of persons belonging to a national minority has a significantly higher value than the vote of other voters. Therefore, the representatives elected on the basis of a special right would actually be elected on the basis of such a number of voters and valid votes of those who participated in elections that is significantly smaller than in the case of elections of other parliamentary representatives.

4/ the principle of equal weight of electoral vote ('one man, one vote'). We are not familiar with the fact that in any country of the European Community, whose parliamentary systems are regarded as our models, exists a special right given to a certain group that differs from the right granted to other citizens in the election of members of the parliament.

5/ the principle of equality of national minority rights. In the Republic of Croatia, there are more persons belonging to solely one national minority (i.e. Serb national minority) than persons belonging to all the other national minorities. If a special right were given to persons belonging to national minorities participating with less than 1.5% in the total population of the Republic of Croatia to elect more representatives belonging to such national minorities, this principle would require an increase in the number of representatives who will be elected on the basis of a special right by persons belonging to Serb national minority. The number of representatives elected in this manner would disturb relationships in political decision-making which should be based on the election results obtained on the basis of a general voting right.

6/ the principle that voters may not be obliged to reveal their affiliation to a national minority. It is not possible to comply with this principle if a special voting right is to be stipulated for persons belonging to national minorities to elect their representatives, that is, if the citizens of the Republic of Croatia, who consider themselves affiliated to a national minority, do not declare themselves as such in the process of compiling voters registers for

the election of representatives from the ranks of national minorities based on this special voting right.

Facing the fact that (all) opposition political parties do not accept the adoption of the Constitutional Law on the Rights of National Minorities which will contain provisions on the special right of persons belonging to national minorities to elect their representatives into the Croatian Parliament (dual vote right), and assessing that other provisions of the Constitutional Law contain quality solutions which significantly contribute to the position of national minorities in the Republic of Croatia, the Government of the Republic of Croatia decided to forward to the Croatian Parliament the Proposal of the Constitutional Law on the Rights of National Minorities which stipulates (in Article 17) that persons belonging to national minorities shall have the right to representation in the Croatian Parliament. The manner of exercising this right, including the possibility of recognising the special right for persons belonging to national minorities to elect their representatives (dual vote right), will be regulated by the law which regulates the elections of representatives into the Croatian Parliament.

11. a) In relation to the provisions on representation in local and regional self-government units (the provision of Article 19 of the Constitutional Law Proposal, i.e. the provision of Article 18 of the Final Proposal of the Constitutional Law), both the Venice Commission and the OSCE HCNM stress that the proposed electoral model requires persons belonging to national minorities to reveal their ethnic affiliation.

b) Here again, the answer is that it is impossible to use the so-called dual vote right, i.e. the electoral right pertaining only to persons belonging to national minorities, if some voters do not declare their affiliation to a national minority, as such declaration enables them to exercise the said right.

12. a) The OSCE HCNM suggests that the provision of Article 20, paragraph 2 (this is now the provision of Article 19, paragraph 2, of the Final Proposal of the Constitutional Law) should guarantee to persons belonging to national minorities proportional representation in the administrative and judicial bodies, and not the representation "taking into account the share of the members on national minorities in the population at the level at which the state administrative or judicial body is established."

b) Stipulation of the suggested provision is basically identical to the provision of Article 8 (existing) of the Law on the State Administration System (Official Gazette, Nos. 75/93, 48/99, 15/2000, 127/2000 and 59/2001), which prescribes that "the representation in ministries and state administrative organisations is ensured to persons belonging to national minorities, taking into account their total share in the population of the Republic of Croatia, and in the state administration offices of local (regional) self-government units, taking into account their total share in the population of a county." Since these formulations refer to proportional representation, we have accepted this suggestion.

13. a) In addition to the provisions which regulate minority self-government, the Venice Commission notes that "as compared to the powers and rights allocated to minority self-governments in previous drafts, the new draft means a depreciation of the institution. The decision-making power on proposals concerning the use of national minorities' signs and symbols, and concerning holidays of the national minority concerned is no longer mentioned, nor is the right to receive a written answer to their proposals and requests within 30 days, the

right to propose agenda items for the representative bodies concerning minorities, and the right to give consent regarding personnel-related decisions concerning the institutions relevant for a national minority. Here, again, the right to be consulted (rather than to be informed) is not expressly defined".”

The OSCE HCNM also believes that in the matters of special significance to a national minority, national minorities should have “some real authority” in relation to which he notes: “The proposed system of the so-called ‘minority self-government’ in the Draft Law so far only ensures advisory functions towards the local self-government, i.e. merely the right to have a say in matters of interest to national minorities without any powers of consent, the Croatian Government has made the commitment to the CoE to ensure that persons belonging to minorities are guaranteed rights in the field of local autonomy in accordance with the European Charter of Local Self-Government and Recommendation 1201 (see Venice Commission’s Memorandum on Progress in Co-operation with Croatia CDL (99) 63). Merely consultative powers, as foreseen in Articles 30 and 31 of the Draft Law, clearly do not suffice. It is therefore recommended to provide minority self-government with competencies in areas which specifically affect a national minority and provide the minority self-government with the powers of consent regarding the issues of specific interest to national minorities. These may include competencies regarding the use of national minority signs and symbols, determination of holidays of the national minority, consensual participation in the decisions in the areas of the official use of language, education in the language of a national minority and other issues important for the position of national minorities.”

b) We assess that it is impossible that the Constitutional Law (in fact the organic law) prescribes the right of a minority self-government to propose agenda items of the representative bodies, not even in the matters concerning a national minority, nor the right to give consent to decisions appointing the bodies relevant for a national minority.

The Final Draft Proposal of the Constitutional Law proposes stipulation of the minority self-governments’ right to receive a written answer to their proposals and requests, including the prescription of the relevant bodies’ obligation to submit such answers within a stipulated deadline.

Since the Final Draft Proposal of the Constitutional Law (the provision of Article 31) enables minority self-governments to establish a coordination at the state level, the power of this coordination to decide on the use of national symbols of national minorities and national minorities’ holidays has been stipulated.

14. a) In relation to the provisions of the Council of National Minorities and the Office for National Minorities, the Venice Commission notes: “The explanation concerning Articles 33 and 34 of the draft constitutional law does not seem to clearly indicate whether and to what extent the Council for National Minorities to be established under Article 33, will be the continuation of the existing Council of National Minorities, and whether and to what extent the Expert Service, to be established under the sixth paragraph of Article 34, will be the continuation of the existing Office for National Minorities. The powers of the proposed Council for National Minorities are rather limited, without a well-determined right to be consulted.”

b) We note that the Council (*Vijeće*) of National Minorities was established in 1997 at the initiative of the Office for National Minorities and the then working group for the revision

of the Constitutional Law. Although the Council was in fact established as a community of national minorities associations, the Council has never been registered, nor the manner in which national minorities associations delegate their representatives into the Council has ever been elaborated. It is indisputable that this Constitutional Law shall vest the Council (*Savjet*) of National Minorities with the power to perform certain tasks which, in fact, are now performed by the Council (*Vijeće*) of National Minorities. However, the Council (*Savjet*) of National Minorities is not "the continuance" of the Council (*Vijeće*) of National Minorities, but shall be a legitimate and legal body with the rights and obligations according to the Constitutional Law. Likewise, the Expert Service of the Council of National Minorities shall not be "the continuance" of the existing Office for National Minorities. The existing Office for National Minorities has been established by the Government of the Republic of Croatia as its own body, and will not terminate its activities when the Constitutional Law comes into effect. However, it will be necessary to change the Decree of the Government of the Republic of Croatia so as to prevent the interference of the activities of the Office for National Minorities with the powers of the Council (*Savjet*) of National Minorities.

15. a) The OSCE HCNM believes that the members of the Council of National Minorities (*Savjet*) "should be independent from the Government and therefore, as a matter of principle, should be 'appointed' by the groups the interests of which they represent. Therefore the competence of the Government to appoint the members of the Council should be removed from the law and a clear method of election of the members of the Council by the national minority groups that they would represent should be established in the Draft Law. … The Draft Law should ensure that all minorities living in Croatia are represented in the Council. Hence, the possibility to enlarge the number of members of the Council accordingly should be incorporated in the Law. … The question of the compatibility of the functions of the President as an independent member of the Council and his accountability to the state administration as the head of the Expert Service is raised. Clear safeguards for the independence of the President should be guaranteed. … In order to give legitimacy to the functions of the President and the Deputy President they should be essentially elected by the Council itself. … There does not exist a corresponding obligation of the state bodies to consult the Council for National Minorities on any administrative or legislative measures to be undertaken by the state authorities concerning the interests of national minorities. …the Draft Law does not place a corresponding obligation on the bodies of legislative and executive authorities to respond (within a stipulated reasonable time) to their proposals of measures... The Draft Law should also stipulate a clear obligation of the Government to allocate special funds in the state budget for these purposes."

b) We indicate that the Expert Service of the Council of National Minorities is not a state administration body, but the service of the Council. Therefore, there is no incompatibility if it is stipulated that the President of the Council (who performs his/her duty professionally) is also the Head of the Expert Service. This solution is also more economical than the one according to which the Expert Service would have a separate head. I assess that the suggestions to stipulate that state bodies, when adopting the acts concerning national minorities, should ask for the opinion of the Council and inform the Council on their standpoints and conclusions, could be accepted. It seems reasonable to me that the Constitutional Law should stipulate that the funds required for the needs of national minorities should be provided by the State Budget (the needs that are regulated by this Constitutional Law and special laws, and that should be financed from the State Budget).

We maintain the proposal that the President of the Council should be appointed by the Government of the Republic of Croatia, so as to prevent that, in cases of appointing a person who would perform this duty, the only national minority which accounts for more than 1.5% of the population of the Republic of Croatia becomes a majority group. We do not find it opportune that each national minority should have a representative from its ranks in the Council of National Minorities. This stipulation would turn the Council into an enormous body, since it raises the question of how to set numerical relations between the representatives of one national minority participating with more than 1.5% in the population of the Republic of Croatia on the one hand, and the representatives of the national minorities consisting of a few tens of persons in the Republic of Croatia.

16. a) The Venice Commission notes with regret "that Article 14 of the draft constitutional law speaks only of 'preservation of national and cultural identity of a national minority' as the purpose of minority associations, but no longer of 'promotion', which would have implied a more active approach."

Accepting the suggestion of the parliamentary Committee for the Constitution, Political System and Standing Orders, the provision of Article 14 of the Constitutional Law Proposal has been removed, because the issue that it previously regulated is now regulated by the provision of Article 13. Since the remark of the Venice Commission seems justified, we have proposed that the provision of Article 13, paragraph 1, should be regulated in accordance with that remark.

President of the Working Group

Goran Granić, Ph.D.
Deputy Prime Minister of the Government of the Republic of Croatia
/signed/